



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

MISCELLANY.

SPECIAL PARTNERSHIPS.—It is provided by the Special Partnership Act of Michigan (How. Ann. Stat., sec. 2348) that, at the time of the formation of the special partnership, one or more of the general partners shall file an affidavit stating that the special partner has paid in his requisite amount “in money or other property at cash value.” In *Chick v. Robinson*, 95 Fed. 619, a creditor of the partnership attempted to hold the special partner to the liability of a general partner on the ground that the contribution of the special partner had been made, not in money, but by a check, which check, however, had been honored on presentation.

The Circuit Court of Appeals for the Sixth Circuit, while admitting that many courts hold a special partner to the very strictest compliance with the words of the statute in order to shield him from general liability—see *Haggerty v. Foster*, 103 Mass. 17—nevertheless held that a check, filed in good faith, and which has been subsequently honored, comes within the intendment of the above section. “Doubtless the weight of authority in the construction of limited partnership statutes is to the contrary; but, as already said, the trend of modern cases is towards a more liberal and sensible view of such statutory requirements. Their purpose is to secure the actual payment of the money into the capital of the firm, and, failing that, to hold the partner to a general liability. It seems to us that our construction of the statute secures this end, and it does not entrap the honest and unwary into unexpected liabilities by enforcing a stricter rule as to what are cash payments than obtains in the commercial community.” Per Taft, J.—*American Law Register*.

RIGHT OF ENTRY FOR CONDITION BROKEN WITHIN THE RULE AGAINST PERPETUITIES.—A right of entry for condition broken is within the operation of the Rule against Perpetuities. At last that point has been directly passed on by an English court. In *re The Trustees of Hollis' Hospital and Hague's Contract* (1899), 2 Ch. D. 540. There one Hollis by lease and release conveyed property in 1726 to trustees upon trusts for a hospital. The release contained a proviso that if the premises should be used for any other purposes they were to revert immediately to the right heirs of Hollis. In 1898 a contract was made by the trustees to sell part of the property so conveyed, and the purchaser contended that a good title could not be made because of the condition contained in the original release. The court, however, held that this was an express common law condition subsequent, that as such it was void as a perpetuity, and that, therefore, a good title could be passed. The views of Lewis, Sanders and Gray were sustained, and that of Challis rejected. As a matter of authority in England two *dicta* are to be found on the point; they suggest, in line with the present case, that such a future interest may well be within the Rule against Perpetuities. *Re Macleay*, L. R. 20 Eq. 186; *Dunn v. Flood*, 25 Ch. D. 629. In the United States, while there is practically no decision in which the objection of remoteness in a condition has been passed upon, yet there are many cases in which conditions obnoxious to the Rule have been upheld without that difficulty having been noticed at all. *Cowell*

v. *Springs Co.*, 100 U. S. 55; *Guild v. Richards*, 16 Gray 309. The great weight of authority in this country, apparently without any consideration of the question, creates in this regard an arbitrary exception to the Rule against Perpetuities.

It is eminently satisfactory that the point has finally been carefully argued, judicially determined and a sound result reached. Where express or implied conditions were attached to a conveyance the grantor had a right to enter on breach of the condition—this right was not dependent on tenure, and was not affected by the statute *Quia Emptores*. It has been argued that these interests are not within the Rule against Perpetuities, because they are common law interests and releaseable. But common law interests may well be within the Rule, for instance the executory devise of a chattel real. And interests which are releaseable are also not excluded from its operation. Great practical inconvenience must result from a doctrine opposed to the one in the present case, particularly in America, where the number of heirs from whom the owner must seek a release of this right increases greatly as time goes on. Gray, Rule against Perpetuities, secs. 299-311.—*Harvard Law Review*.

SECRET TRUSTS UPON BEQUESTS.—In disregard of the prohibition by the Statute of Frauds of any oral addition to testamentary documents, courts of equity generally enforce oral trusts intended by the testator to be attached to devises and bequests when communicated to the apparent beneficiary before the testator's death. *Brooks v. Chappell*, 34 Wis. 405. These seem, however, to be enforced as testamentary declarations. In fact, they cannot be treated as express trusts, for the duty does not come into existence at the time of the communication, but only on the death of the testator. The true explanation is, perhaps, that a constructive trust in favor of the intended beneficiary is imposed to enforce specific performance of a contract made by the apparant beneficiary with the testator. *McLellan v. McLean*, 2 Head, 684. Where the legatee expressly assents to the arrangement, it is very easy to work out a unilateral contract, in which the consideration for the promise is the bequest; but it is doubtless an unusual stretching of the principles of contract to find a promise in a mere absence of dissent. However this may be, many courts treat these as cases of constructive fraud simply. But whatever name be given to the reason for reaching this result, it seems that the principle of specific performance is justly extended to cases where a benefit has been knowingly accepted as consideration for an act. *Administrator v. Rynd*, 68 Pa. St. 386.

An interesting illustration of these principles is seen in *Re Stead*, The Law Times, Dec. 9, 1899. Realty was devised to trustees for conversion, and then to hold for A and B absolutely as joint tenants. A secret trust intended to be imposed upon this latter interest was communicated by the testator before death to A, but not to B. On a bill by A to have the trust declared, the court held that A was bound by this agreement, but B was not. In that respect, at least, this decision is a marked departure from precedent. It is very ancient law that joint tenants are but one person; thus, livery of seisin to one is livery to all, Co. Lit. 496; occupation by one is occupation by all, *Small v. Clifford*, 38 Me. 213. And so it has been held generally that, while only those tenants in common to whom a secret trust has been communicated are bound thereby, communication to one joint tenant, as in the principal case, is sufficient to bind all. *Rowbotham v. Dwinett*, L. R. 8 Ch. D. 430; *Fairchild v. Edson*, 154 N. Y. 199. So much of the principal

case, therefore, as denies enforcement of the trust against B cannot, it seems, be supported; otherwise the case follows well-accepted principles.—*Harvard Law Review*.

QUESTIONS PROPOUNDED BY THE COURT OF APPEALS, ON THE BAR EXAMINATION, AT RICHMOND, JANUARY 12, 1900.

Reasons for each answer to be given, unless plainly not required.

1. Define curtesy and dower respectively; give the requisites of each; and specify all the differences between the two estates.

2. A father devised his land to his son, James, but provided that if James should die without having lawful issue of his body, the lands were to go at the death of James to the testator's son, John. James died leaving a widow, but without having had lawful issue of his body. What kind of an estate did James take, and would his widow be entitled to dower in the land? If James had died intestate, leaving issue at his death, would they have taken the land at his death; and if so, how would they take it, by descent or by purchase?

3. A married woman, having an equitable separate estate in fee in a tract of land, with power to dispose of it by will, devised it to her children, and died leaving her husband surviving her. Is he entitled to an estate by the curtesy in the land?

Suppose the land was her legal separate estate, and that she had conveyed it away by her separate deed in her lifetime. Would her husband be entitled to an estate by the curtesy in the land, notwithstanding her conveyance?

4. A husband releases to his wife all his marital rights in a tract of land belonging to her. She dies intestate, leaving him surviving her and having had issue by him born alive. Is he entitled to an estate by the curtesy in the land?

Suppose that he has conveyed his own land in trust for her sole and separate use. Would he be entitled to curtesy in that case in the event of his survival of her?

5. On January 1, 1898, A unlawfully possessed himself of a piece of land, of which B is the true owner. By what proceeding may B recover the possession of the land from A? If, however, A had taken possession of the land on July 1, 1896, how would B have to proceed to recover the land?

6. A sells to B a tract of land and puts him in possession of it, but does not convey it to him. The contract, stating the purchase and the terms of the sale, is reduced to writing and signed by the parties. B having failed to pay for the land according to the terms of his purchase, may A in an action of ejectment recover the land from B? If you are of opinion that A could maintain an action of ejectment in such a case, what is it essential for A to do before bringing the action in order that he may maintain it? And would he have to bring the action within any prescribed number of years?

7. Suppose, however, that although A had not conveyed the land to B, yet B had paid him in full for it, could A still maintain an action of ejectment against B and recover the land? Could B in such case defeat A's action of ejectment, and, if so, how?

8. What is a vested remainder, and what a contingent remainder; also an executory devise? Give an example of each.

9. What is a will, and how must it be made to be valid in Virginia? How as to persons under twenty-one years of age and married women?

10. A, a citizen of Virginia and owning real and personal property both in Virginia and in another State, in which latter State all testaments of real and personal property are required by the laws thereof to be attested by three witnesses, executes his will according to the laws of Virginia, disposing of all his estate, both real and personal. Would a will so executed be a valid devise and bequest of his real and personal property, or of either, in the foreign State? With respect to what laws must the execution of a will in a case of this kind conform, and with regard to what laws is it to be construed as respects both real and personal estate?

11. How may title to personal property be transferred? How as to realty? Suppose the title to personal property sold proves defective, and there was no express warranty of the title, has the purchaser any remedy? What is the maxim in regard to the purchase of real estate?

12. What is a corporation; by whom are corporations created or chartered; give the manner in which a circuit court charter may be obtained; who is the governing body in a private corporation; and what is the extent of a stockholder's liability upon a stock subscription; and give an instance where a court cannot grant a charter.

13. What is the degree or measure of duty which the master or employer owes to his servants in employing fellow-servants and in furnishing appliances with, and places in, which to work? May he delegate these duties, or any of them, to a subordinate, and relieve himself from liability for an injury to a servant, resulting from the neglect thereof?

What are the risks, if any, assumed by the servant upon entering the employment of the master?

14. A, on May 1, 1896, sells to B 1,000 bushels of wheat at \$1 per bushel, to be delivered at B's mill on July 1, following. Wheat by July 1 has advanced to \$1.50 per bushel, and A refuses to deliver it to B. What are his remedies? By what action may he enforce them? And what would be the measure of his recovery in the event that he had paid for the wheat in advance; also if he was only to pay on the delivery of the wheat?

15. A, a dealer in leaf tobacco, shows to B his tobacco hanging in his warehouse, and B agrees to buy of him 100,000 pounds at 10 cents per pound, and to pay for the same as soon as the tobacco is prized, weighed, and marked by A. A prizes the tobacco and sets the hogsheads apart for B, but before he has weighed and marked them, his warehouse catches on fire and all the tobacco is consumed. Who must bear the loss, A, the seller, or B, the buyer?

16. What are the remedies for the collection of rent? Give the proceeding both when it is payable in money and when in a part of the crop?

17. B gets a judgment against A for \$100 and levies execution on a horse which C claims. By what proceeding can C assert his claim to the horse?

18. A gets a judgment against B for \$1,000, and execution goes into the hands of the sheriff of Hanover county on the 1st of January; B makes an assignment to C, as trustee for various creditors on the 10th of January and records his deed in

Hanover county on that day; C knows nothing of A's judgment and execution; and, among the assets of B, which were conveyed to C, were some bonds worth \$800. Which has the prior lien on the bonds, A's execution or C under the deed of assignment?

19. If in the above case, B had several horses in Caroline county which were included in the deed, and the deed had been recorded in that county on the day it was made, and the execution had been delivered only to the sheriff of Hanover county on the 1st of January, which would have the prior lien on the horses in Caroline county, and why?

20. A dies intestate owning a tract of land and leaving five children as his heirs at law. Two of the children employ you to obtain their shares of the land. Give in full the proceeding by which you may do this, and state when you will be obliged to recover their shares in the proceeds of the sale of the land instead of a part of the land itself. Suppose that he had also left personal estate and they employ you to obtain their shares of that also, give the proceeding to recover the same.

21. By what proceedings are the lands of a debtor subjected to the payment of a judgment lien against him? When must they be rented; and when may they be sold?

22. A, as principal, and B, as his surety, owe a debt by bond to C. C sues and gets judgment against both A and B for the debt, which judgment is a lien on the land of A, but C sues out execution on his judgment and levies it on the goods and chattels of B, who thereupon pays it. Can B in order to reimburse himself avail himself of the lien of C's judgment on the land of A? If so, how may he do so, and upon what principle?

23. A and B are equal partners. B owes C an individual debt, but he has no individual estate out of which it can be made. Can C subject the interest of B in the partnership, and if so, how shall he proceed? And what is B's interest in the partnership which may be subjected to the payment of C's debt, and how is it to be ascertained?

24. Name the personal actions; and state concisely the causes for which each may be brought, and the legal term for the plea which is the "general issue" in each.

25. May you bring a single action, and, if so, what action, on the following instrument:

"One day after date we promise to pay to John Smith, the sum of five hundred dollars for value received. Witness our hands and seals this 1st day of July, 1895.

"RICHARD JONES,

"JAMES THOMAS, [Seal.]"

And how otherwise might you sue on this instrument?

26. What is the office and effect of a demurrer, and when should it be interposed to a pleading? What does it admit, and what does it not admit?

How many pleas may a defendant plead to a declaration? And how many replications may a plaintiff file to a plea of the defendant?

27. A declaration contains several counts, all of which are bad, except one,

which is good in form and substance. The defendant demurs generally to the declaration. Should the demurrer be sustained or overruled, and why?

If all the counts are good except one, and the defendant deems it necessary before going to trial to get rid of the bad count, what is the remedy?

28. A declaration contains a count to recover damages for a breach of a contract and also a count to recover damages for a tort. Both counts are good in form and substance. Would the declaration be good on demurrer?

29. How is advantage taken of a variance between the writ and the declaration in an action at law?

What is meant by the rule that "a plea in abatement must give the plaintiff a better writ?" Give an illustration.

30. What is the difference between a plea in abatement and a plea in bar; and when is a plea to the jurisdiction required to be filed? What is necessary to be set forth in a plea to the jurisdiction, and how must the plea be verified?

31. A and B are opposing counsel taking depositions before a commissioner in chancery; A asks the witness a question which B thinks illegal; what is necessary for B to do to have the question and answer excluded both in the lower court and in the Court of Appeals? Is it the practice for the witness to answer the question or decline to answer it? If the witness should decline to answer the question can he be made to do so, and how?

32. A and B are opposing counsel in a trial before a jury and A asks the witness a question which B thinks is illegal; what is necessary for B to do to have the question and answer excluded? Suppose he is not successful in having it excluded and desires to take the case to the Court of Appeals for this purpose, to what proceeding must he resort and what must it show? Suppose the objection was not as to the question propounded but as to the competency of the witness introduced and the objection was overruled, what would be the proceeding in that case in order to have the ruling of the trial court reviewed by the appellate tribunal, and state whether there is any difference in the matter required to be shown in the proceeding taken in the two cases, and if so, what?

33. What is meant by a motion in arrest of judgment; for what does it lie; if it be overruled by the trial court, what proceeding is necessary in order to have its judgment reviewed by the appellate court?

34. What is the chief distinction between the competency of witnesses at common law and under the Virginia statute; and state who are competent and who are incompetent witnesses under the statute?

35. A as the agent of a life insurance company procured B to take out a policy on his life; upon the death of B, the company refuses to pay the policy upon the ground of misrepresentation in the contract upon which the policy of insurance was issued; is A a competent witness for the company under the Virginia statute? How, at common law?

36. A husband conveys property to his wife for alleged valuable consideration, his creditors attack the conveyance upon the ground of fraud; are he and his wife, or either of them, competent witnesses at common law to prove the validity of the deed? What do you say as to their competency under the present state of the Virginia law?

37. If a contract is in writing, what is the rule in regard to the admission of oral evidence to explain the intention of the parties or to contradict it? If ever admissible in the construction of written instruments, when is it admissible and to what extent?

38. What is the difference between the degree of proof required in civil and criminal cases?

39. What are dying declarations, and when are they admissible in evidence? Must they be sworn to by the party making them in order to be admissible?

40. How are criminal offences divided? What constitutes a felony, and what a misdemeanor?

41. Name the different grades of homicide, and give the punishment for each.

42. Upon proof of the homicide, what is the presumption of law as to the grade of the crime? Define "reasonable doubt" as applied to a criminal prosecution.

43. Define burglary; larceny, simple and compound, grand and petit; and give the respective tribunals which in Virginia have original jurisdiction of offences.

PLEDGE—*I hereby certify that I have neither given nor received aid during this examination.*

The following were the successful applicants :

Patrick Henry Aylett, Aylett; A. Gordon Brown, Hampton; Hilton W. Godwyn, Richmond; John W. Guerrant, Richmond; Haskins Hobson, Belona; Robert E. Moore, Mt. Carmel; Robert S. Rives, Manchester; John Ross, Jr., Calverton; John C. Weckert, Richmond; John B. Welsh, Richmond; John Weymouth, Hampton; David M. White, Richmond; Arthur W. Winn, Richmond.